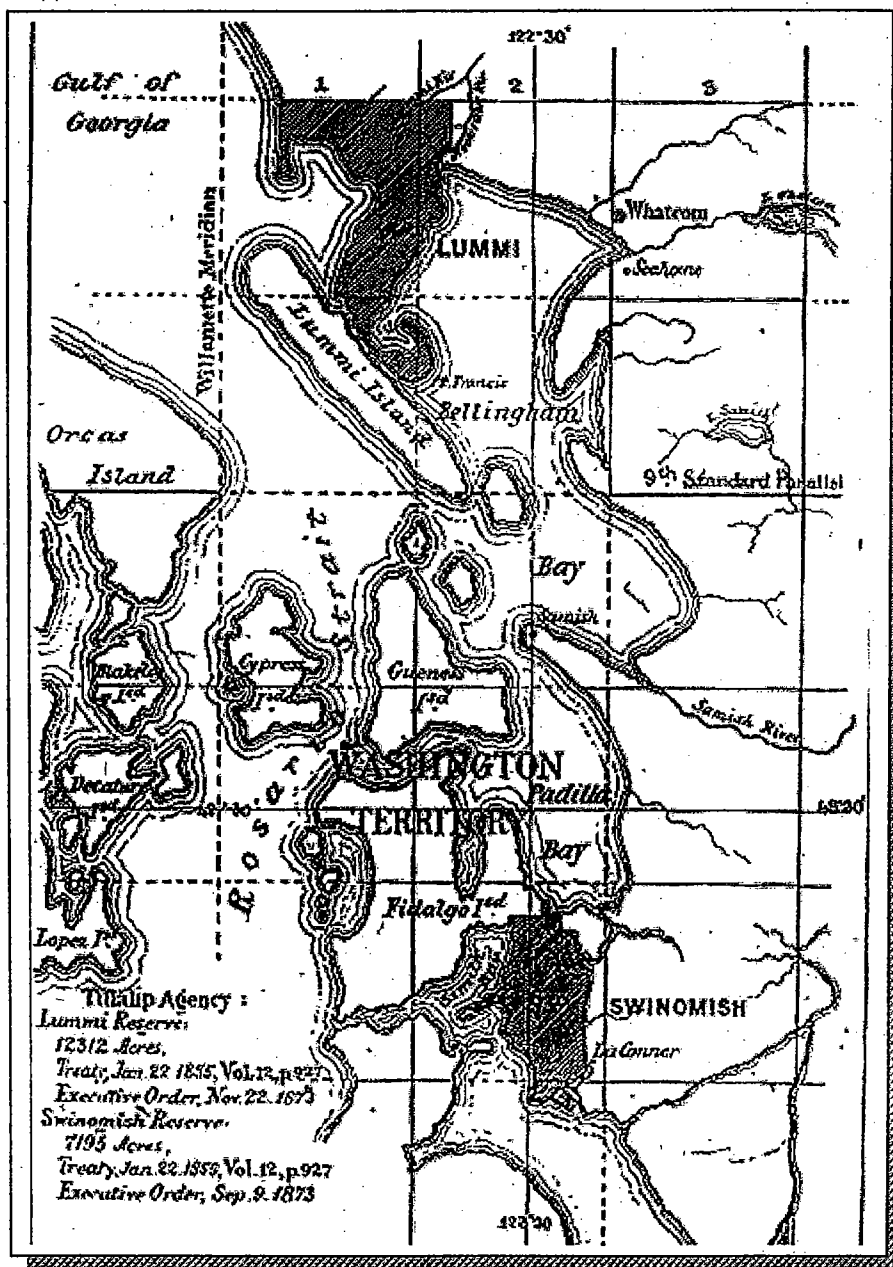


EXHIBIT 3

Analysis and Documentation of Lummi History Aboriginal, Prehistoric, Treaty, & Reservation Periods For the Lummi Peninsula Water Rights Case

Chris Friday
Bellingham, Washington
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ENVIRONMENTAL & NATURAL
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U.S. Geodetic Survey Maps (3), 1887 and 1888
 Reservation Land Assignments, 1885
 Reservation Homesite Map, 1910
 Lummi Indian Reservation, 1944

land title and competing white land claims.⁴ Ethnohistorian Daniel L. Boxberger suggests that the Senate would not ratify the treaties because senators perceived them as "too liberal." Stevens's 1857 election to Congress as a territorial delegate helped smooth the way for the ratification of the treaties. So, too, did a series of small-scale Indian wars west and east of the Cascades between the 1855 negotiation and 1857. As Boxberger notes, those wars were a sign of a general "dissatisfaction" with the reservations and the failure to ratify the treaties.⁵ Ratification of the Puget Sound treaties, including that negotiated at Point Elliot, and the 1873 Executive Order establishing the reservation boundaries solidified the physical and legal existence of the Lummi Reservation.

Background and Intent of Treaty Making

In the early and mid-1850s, United States treaty making policy with American Indians took a dramatic turn. Earlier treaties were largely based on the theory of removal to distant Indian territories. By the mid-nineteenth century, the policy shifted from removal to one in which the federal government located Indians on lands close to aboriginal sites of occupation with the explicit intent of assigning those lands to individuals whenever possible in order to forward the "pursuits of industry" and "civilization" among Indians.⁶

⁴ The Treaty of Point Elliot was negotiated January 22, ratified on March 8, 1859, and proclaimed on April 11, 1859, 12 Stat. 927. (See 384 Fed. Sup. 349.)

⁵ Daniel L. Boxberger, *To Fish in Common: The Ethnohistory of Lummi Indian Salmon Fishing* (Seattle: University of Washington Press, 2000), 26.

⁶ Francis Paul Prucha, *The Great Father: The United States Government and the American Indians*, vol. I (Lincoln: University of Nebraska Press, 1984), 315-318.

land for cultivation.”³⁸ Article 13 gave immediate funds to assure continued self-sufficiency among the signatory tribes and bands of the Treaty of Point Elliot. These provisions encouraging Indians to follow “civilized pursuits,” in the lexicon of the historical period, made clear that Stevens believed the reservations should serve as permanent homelands for Indians. At all the subsequent treaty councils Stevens and his associates continued to stress that the treaties did not restrict hunting, gathering, and fishing off reservation. They also continued to offer assistance to the tribes in their agricultural and industrial pursuits.

In addition to reiterating earlier points, Stevens and his associates consistently offered evidence that they intended the tribes to remain self-sufficient through a combination of traditional practices and newly acquired agricultural, commercial, and industrial activity. At the Point No Point Treaty on January 25, 1855, B.F. Shaw explained that Indians would not be “called upon to give up their old modes of living and places of seeking food, but only to confine their homes to one spot.” Stevens explained at that council that “the Great Father wants to put you where you cannot be driven away” and promised to build a school, clear lands, and provide seeds and clothing. At Neah Bay, Stevens told the Makah that the federal government would continue to permit, even encourage whaling and would leave the tribe “enough [land] to live and raise your potatoes.” At Chehalis, Stevens responded to concerns about the retention of fishing sites with a promise that Indians there “shall have the water [for fishing] and get food” off the

³⁷ Charles J. Kappler, comp. and ed., *Indian Affairs: Laws and Treaties*: Vol. II, *Treaties* (Washington, D.C.: Government Printing Office, 1904), 670.

³⁸ Charles J. Kappler, comp. and ed., *Indian Affairs: Laws and Treaties*: Vol. II, *Treaties* (Washington, D.C.: Government Printing Office, 1904), 672.